

This Issue . . .

Small may be beautiful, but at THE INTERNATIONAL LAWYER we're inclined to think that a little bit bigger is a little bit better! Since volume 18, issue 2 of the Journal, readers have received issues offering nearly twice the number of pages they previously enjoyed. While the increased size alone is not important, we think it has enabled us to enhance the topic coverage and the analytical depth offered our readers. This issue, filled with rich and useful material, continues in that mode.

Symposium

For the eighth consecutive issue, the Journal features a Symposium. This one addresses Comparative Banking Law, specifically various countries' laws on bank lending and depositor rights and responsibilities. *Connie Friesen*, in Part I of her very valuable treatise on how international lending is regulated and supervised in the world, examines the major creditor nations of the United States, United Kingdom, Federal Republic of Germany and Japan. Part II, appearing in TIL's next issue, will analyze the approaches of France, Belgium, the Netherlands and Switzerland, as well as make some important suggestions for reform. Co-authors *Ed Leahy* and *Mark Davis* offer a second comparative study, enabling readers to obtain a greater understanding of, what may be for some, the mysteries of banking regulation. The uncertainties of the world economic and political condition make foreign deposits all the more risky. Ed and Mark clarify depositor rights and responsibilities in countries with widely varying political, social and economic systems. The countries compared are the Netherlands, Federal Republic of Germany, Australia, Egypt, Saudi Arabia, Pakistan, India and the Soviet Union.

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Articles

Leading the fine set of articles for this issue is *Barbara Unger's* on the recognition of foreign bankruptcies in the United States. As she points out, U.S. courts have not historically treated foreign creditors favorably, especially when there were conflicting claims of U.S. creditors involved. This situation has in fact evolved to greater recognition, however, owing in part to judicial interpretation of Congress' intent expressed in the Bankruptcy Reform Act of 1978. Barbara discusses this evolution and provides practitioners with a clear explanation of the current law.

As *Michael Sennett* and *Andrew Gavig*, the authors of the next article, exclaim: "Antitrust 'extraterritoriality' is the rage." Indeed it is and recent years have witnessed significant debates on this topic in the courts, in Congress, in the American Law Institute's deliberations with respect to the *Restatement of Foreign Relations Law of the United States (Revised)*, and, I might add, in the pages of *THE INTERNATIONAL LAWYER*. This article significantly adds to these discussions by reviewing the interest balancing approach in the contexts of the conflicting federal appellate decisions of *Laker Airways* and *Timberlane III*, and of the constitutional role of the judicial branch. The authors conclude, perhaps controversially, that the resolution of the extraterritoriality issue properly belongs to Congress and the Executive, not the courts.

To many international legal practitioners, the lure of China is irresistible. With the world's largest population, a rich natural resource base, and a professed eagerness to attract international investment and business activity, the People's Republic of China offers much. Although some have been wary of the communistic system of government and its historical antipathy of the West and capitalism, recent developments signalling a unique accommodation of private enterprise have allayed some of that concern. This fast-moving development has not been adequately assessed in Western legal literature, and for that reason *Howard Chao's* carefully researched article on the developing Chinese law of collective enterprises is of particular merit. Using the most recently issued laws and regulations, Howard examines the Chinese law of formation, capitalization, management and taxation of collective enterprises, which readers will find resemble Western-style stock companies.

Richard Pugh, a member of TIL's Board of Editorial Advisors, and his colleague, *Samuel Sessions*, have collaborated to produce an analytical assessment of the current law and policies governing the foreign tax credit limitation and they critically examine the Administration's proposed extensive changes to the existing rules. As Dick and Sam write in their article, "The potential major effects these changes would have on the after-tax profitability and competitive position of U.S. business abroad render them a matter of high priority for U.S. businesses with foreign operations."

Short Articles, Comments and Casenotes

Common Market experts *Daniel Silver* and *George Bustin* begin this feature of the issue with a short informative piece on how EEC antidumping proceedings are frequently terminated by written "undertakings" from exporters. The authors provide practitioners with a useful guide to law and procedure governing such undertakings, and offer their advice on how to most effectively handle this form of settlement for an exporter client. The article should nicely complement the several earlier articles in volumes 18 and 19 which examined various facets of EEC law having potential impact on U.S. enterprises doing business in the European Community.

THE INTERNATIONAL LAWYER is pleased to have the opportunity to honor *The Honorable Malcolm R. Wilkey*, who recently retired from active service on the United States Circuit Court of Appeals for the District of Columbia Circuit. Judge Wilkey has long been a friend and supporter of the Journal as well as contributor to its pages, but we honor him especially for his judicial contributions to the development of International Law in the United States. The affectionate tribute to him by *Professor Harold Koh*, a former law clerk of the Judge, indicates the indelible marks Judge Wilkey's many opinions have left on how our courts, the bar and academia deal with international legal subjects.

Midwesterner *Philip Weems* in his article draws our attention to the little-noticed reporting requirements for U.S. companies investing overseas contained in the 1976 International Investment Survey Act. By publishing Phil's brief but useful analysis, international practitioners will hopefully be better informed when counseling clients engaged in the international trade and investment of services. Banker-lawyer *Ron Flax-Davidson* next informs us of a treaty arrangement amongst the central banks of twelve commercially active Latin American countries. The ALADI Treaty provides for a procedure of intra-regional trade which greatly reduces the risk of local currency inconvertibility and the need for scarce U.S. dollars. Certainly, approaches such as these are sorely needed if such debt-ridden countries are going to be able to stimulate economic recovery.

Stephan Eilers from the Federal Republic of Germany reports on recent efforts to address the current management regime for Antarctica. Since the inception of the existing system in 1959, the Third World has experienced physical and political growth, and has found articulation of reasons for changing the Antarctic system in the new international economic order (NIEO), the Law of the Sea Convention (UNCLOS III) and the "common heritage of mankind" concept. Stephan examines all of this, including the most recent disappointing deliberations of the United Nations.

Current Developments

Judy Bello and *Alan Holmer* provide readers with their sixth article on developments in United States import laws and policies. With their unique background and experience, they have provided readers with insight to the bases and practice of import law. With this article on the review and revocation of antidumping (AD) and countervailing duty (CVD) orders, Judy and Alan again deliver: they review the statutory requirements for annual reviews of AD and CVD orders, including recent amendments and Commerce's regulations, and assess the Department's and the International Trade Commission's application of them. The Journal looks forward to their continuing contribution to this series, but also takes this opportunity to congratulate and wish them well in their new assignments—Alan was recently appointed General Counsel to the U.S. Trade Representative and Judy will serve the U.S.T.R. as Deputy General Counsel.

As chair and vice-chair, respectively, of the Section's International Communications Committee, *Ford Rowan* and *Barbara Waite* write the first of a two part series to inform readers of developments in that exciting legal area. In this issue, they explore the advantages and disadvantages to U.S. participation in the Center for Telecommunications Development, an international organization recently proposed by the Maitland Commission of the International Telecommunications Union. Such a center would provide planning and technical assistance to developing countries for improving their telecommunication infrastructures, and, not incidentally as the authors point out, offer interesting prospects for U.S. industry and the legal profession.

Dismaying as the fact may be, co-authors *Paul Hoffman* and *Professor Linda Brackins* tell us in their article on recent developments in International Human Rights Law that torture is practiced and covertly sanctioned by one-third of the world's governments. As the ABA and this Section in particular pursue the Association's eighth goal of "advanc[ing] the rule of law in the world," it is appropriate that we explore the role of law in eradicating governmental policies that sanction violations of basic human liberties. Paul and Linda's article addresses three developments: the Torture Convention (adopted by the United Nations General Assembly last year), the Joint Resolution on Torture (passed by Congress and signed by President Reagan last year), and the Torture Victim Protection Act, a bill recently introduced in Congress having the endorsement of the ABA House of Delegates.

Bibliography

Since the introduction of the bibliography feature several volumes ago, we have been pleased by the positive reader response to it and its emulation

by a number of other journals. Not only have we been able to offer *Earl Weisbaum's* extremely useful "Selected Readings," used by practically every reader to keep current, but we have also published bibliographies on specific subjects of current significance. In this issue, we present an unusual number of quality bibliographies. The feature commences, of course, with *Earl Weisbaum's* regular contribution. *Dan Magraw*, TIL's Associate Editor, and his co-compiler, *Theresa Ketler*, provide readers with Part One of a comprehensive bibliography of the legal literature on Outer Space published since 1981. *Douglas Reichert*, in the next offering on Provisional Remedies, annotates a listing of the literature of primary and secondary sources on this topic which should be of great practical value to those involved in international litigation. Prompted by the tragedy of the Bhopal disaster and the lack of applicable legal theories, International Law and literature on the subject, *David McFadden* selects a number of helpful sources to serve as a starting place for future inquiry.

Book Reviews and Index

The substantially expanded book review feature offers information and critical analysis of some of the more interesting and useful literature published recently. Readers are reminded to alert us of books they feel deserve review and to volunteer their reviewing talents. *Linda Whisman* for the third time has graciously undertaken the difficult task of preparing the index. Readers should find greater use of it with the increase of topic entries and cross-referencing she has introduced.

Catching my breath in the moments following the completion of the manuscript of another issue of *THE INTERNATIONAL LAWYER* (and with this issue, another volume), I often reflect on the incredible number of author and editor hours involved—all provided voluntarily without compensation. In these days of questioning our profession, it is useful to remind ourselves of such contributions that transcend self-interest, influence the positive development and improvement of the law, and set an admirable standard for our profession.

Hope you enjoy this issue. Once again, it was a pleasure bringing it to you. Happy reading.

SYMPOSIUM

THE U.S. LAWYER AND INTERNATIONAL BUSINESS TRANSACTIONS

